

May 22, 2003

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Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby - TW - A325
Washington, D.C. 20554

MAY 22 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Petition for Rule Making
Knippa, Texas

Dear Ms. Dortch:

Enclosed is an original and four (4) copies of a Petition
for Rule Making to add Channel 226A at Knippa, Texas.

Respectfully submitted,



Charles Crawford
4553 Bordeaux Ave.
Dallas, Texas 75205
(214) 520-7077 Tele
(214) 443-9308 Fax

KnippaCover

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MB 03-104

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Before the
Federal Communications Commission
Washington, D.C. 20554

MAY 22 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of 73.202 (b)) MB Docket No. _____
Table of Allotments)
FM Broadcast Stations)
(Knippa, Texas))

To: John Karousos, Chief
Allocations Branch
Mass Media Bureau

PETITION FOR RULE MAKING

Pursuant to 47 C.F.R. 1.401, Charles Crawford respectfully petitions the FCC to institute a Rule Making proceeding to amend the FM Table of Allotments to add Channel 226A at Knippa, Texas.

DISCUSSION

Petitioner respectfully submits that the public interest would be served by allocating Channel 226A to Knippa, Texas as that community's first local transmission service. Knippa, Texas is a census designated place with a population of 739 people.¹ Knippa has its own post office, its own volunteer fire department, its own pre-K through 12th grades school and a number of local churches. Knippa is a community that is certainly deserving of a local FM service. The proposed channel 226A will provide additional diversity and an outlet for local self-expression to Knippa residents and therefore is in the public interest.

In order for Channel 226A to be allotted at Knippa, Texas, two vacant allotments will need to be replaced with equal channels while still providing for complete city grade coverage over their city of license.

¹ According to the 2002/ 2003 Texas Almanac.

The proposed changes are as follows:

	<u>Current</u>	<u>Proposed</u>
Knippa, TX		226A
Leakey, TX	226A	224A
Rocksprings, TX	223A	245A

Attached hereto is a channel study confirming that Channel 226A can be allocated to Knippa, Texas consistent with the FCC's FM separation rules provided the necessary changes are made at Leakey, Texas. (See, Attachment A) See revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992)

Reference coordinates for Channel 226A at Knippa, Texas are:

29 20 59 N
99 37 40 W

In order for Channel 226A to be allotted at Knippa, Texas, the vacant allotment for Channel 226A at Leakey, Texas must be replaced by Channel 224A. Attached hereto is a channel study confirming that Channel 224A can be allocated to Leakey, Texas consistent with the FCC's FM separation rules. (See, Attachment B) Also note, channel 224A at Mason, Texas was deleted by Report & Order for MM Docket No. 01-159, released March 21, 2003. (See, Attachment C)

Reference coordinates for Channel 224A at Leakey, Texas are:

29 50 31 N
99 42 09 W

In order for Channel 224A to be allotted to Leakey, Texas, the vacant allotment for Channel 223A at Rocksprings, Texas must be replaced by Channel 245A. Attached hereto is a channel study confirming that Channel 245A can be allocated to Rocksprings, Texas consistent with the FCC's FM separation rules. (See, Attachment D) Also note, the proposed allotment to add channel 245C1 at San Antonio, Texas was dismissed by Report & Order released May 8, 2003. (See, Attachment E)

Reference coordinates for Channel 245A at Rocksprings,
Texas are:

30 08 19 N
100 16 07 W

Should this petition be granted and Channel 226A be
allotted to Knippa, Texas, Petitioner will apply for
Channel 226A, and after it is authorized, will promptly
construct the new facility.

The factual information provided in this Petition for
Rule Making is correct and true to the best of my
knowledge.

Respectfully submitted,



Charles Crawford
4553 Bordeaux Ave.
Dallas, Texas 75205
(214) 520-7077 Tele
(214) 443-9308 Fax

cc: Gene A. Bechtel, Law Office of Gene Bechtel, Suite
600, 1050 17th Street, N.W., Washington, D.C. 20036,
telephone (202) 496-1289, telecopier (301) 762-0156,
attorney for Charles Crawford. It is requested that the
Commission and any parties who may file pleadings in the
captioned matter serve copies to Mr. Bechtel as well as
Charles Crawford.

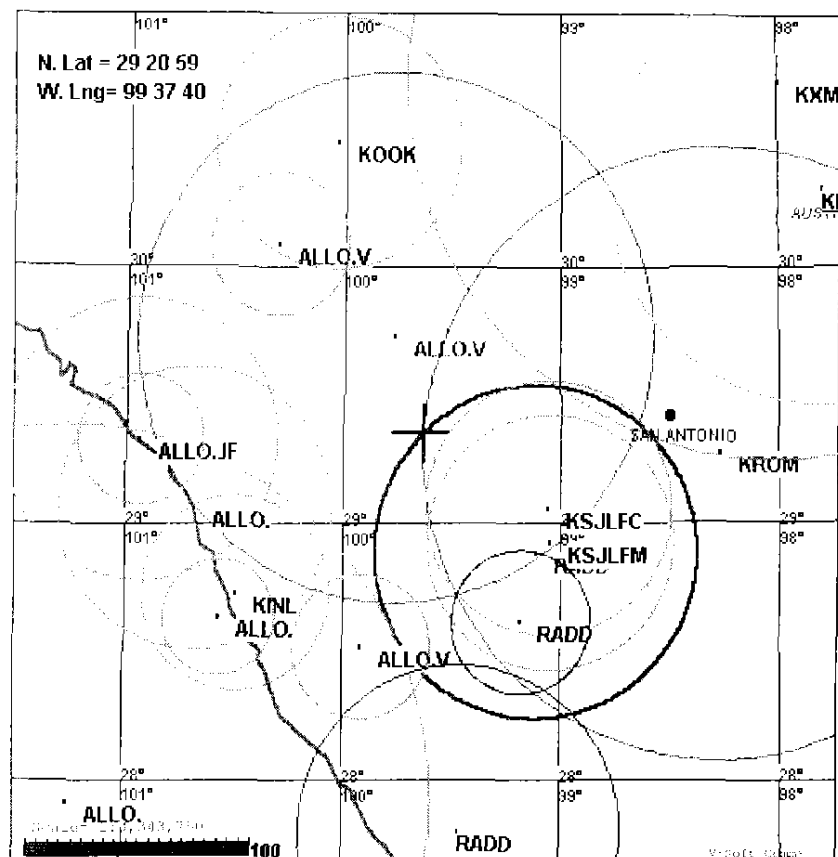
May 22, 2003

Knippa

Attachment A

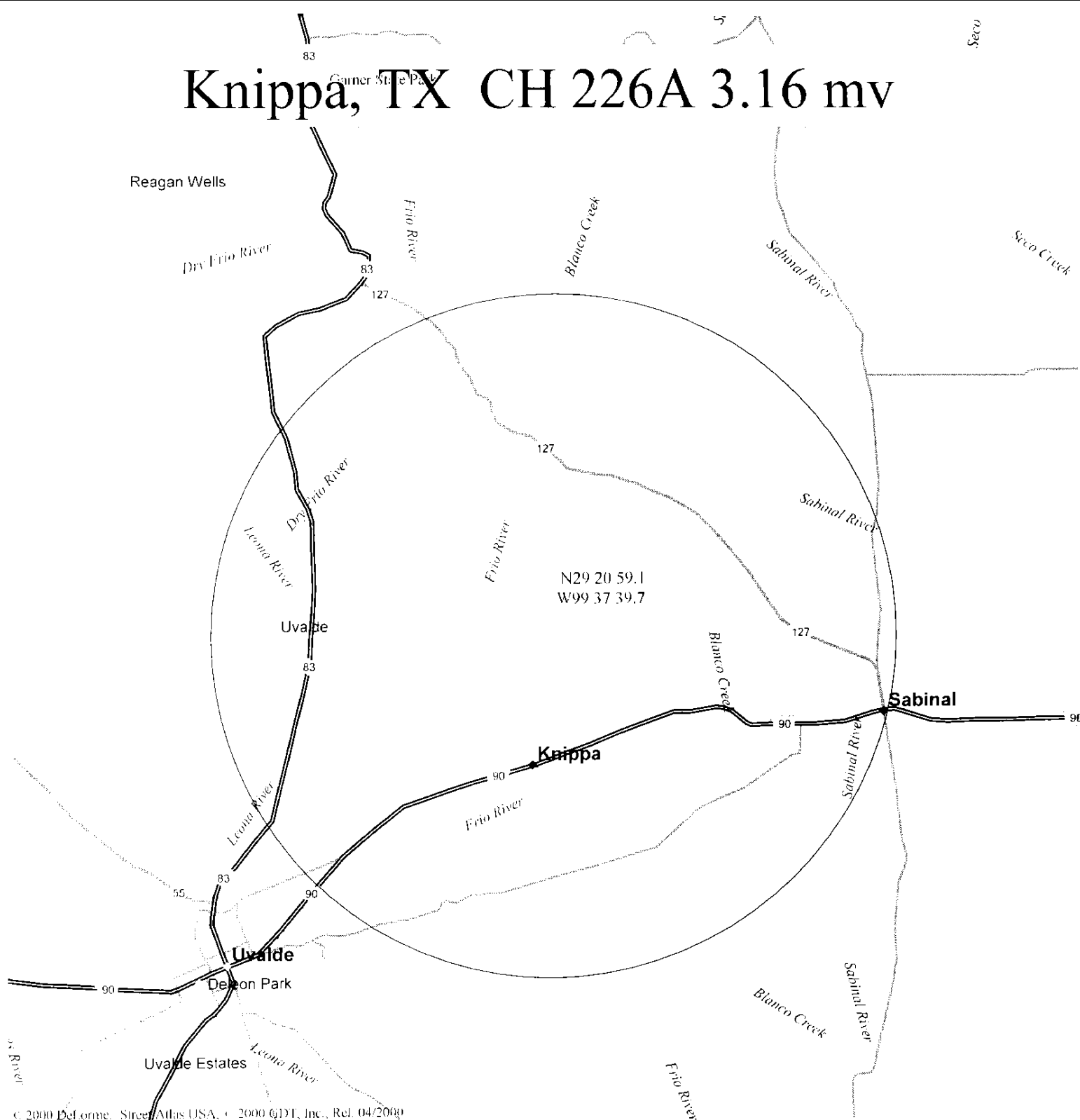
(Channel study for Channel 226A at Knippa, Texas)

FM PROSPTM LOCATE STUDY CH 226 A 93.1 MHz
Study



Call	CH#	Type	Location		D-KM	Azi	FCC	Margin
ALLO.V	226A	VAC	Leakey	TX	43.97	342.7	115.0	-71.03
KROM	225C1	LIC N	San Antonio	TX	132.70	93.3	133.0	-0.30
RADD	227A	ADD	Pearsall	TX	71.83	135.6	72.0	-0.17
KSJLFC	223C2	CP N	Devine	TX	64.29	120.0	55.0	9.29
KSJLFM	223C2	LIC	Devine	TX	73.43	129.8	55.0	18.43
ALLO.	227A		Jiminez	CI	107.26	252.8	61.0	46.26
KXMG	227C	LIC	Cedar Park	TX	219.64	45.4	165.0	54.64
RADD	229A	ADD	Dilley	TX	92.33	151.8	31.0	61.33
ALLO.	226B		Nueva Rosita	CI	224.74	225.2	163.0	61.74
ALLO.V	228A	VAC	Carrizo Springs	TX	96.11	196.9	31.0	65.11
ALLO.	225A		Ciudad Acuna	CI	126.56	269.1	61.0	65.56
XHCDUF	225A	OPE	Ciudad Acuna	CI	126.56	269.1	61.0	65.56
KINL	224C3	LIC	Eagle Pass	TX	108.53	231.0	42.0	66.53
ALLO.V	223A	VAC	Rocksprings	TX	104.60	321.8	31.0	73.60
KOOK	228C2	LIC	Junction	TX	132.55	343.0	55.0	77.55
ALLO.	229A		Fuente	CI	121.05	229.3	25.0	96.05
ALLO.	280C		Ciudad Acuna	CI	126.56	269.1	28.0	98.56
RADD	227A	ADD	Laredo	TX	172.44	174.5	72.0	100.44
KLBJFM	229C*	LIC	Austin	TX	206.87	58.4	95.0	111.87

Knippa, TX CH 226A 3.16 mv



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Scale 1:250,000 (at center)

5 Miles

5 KM

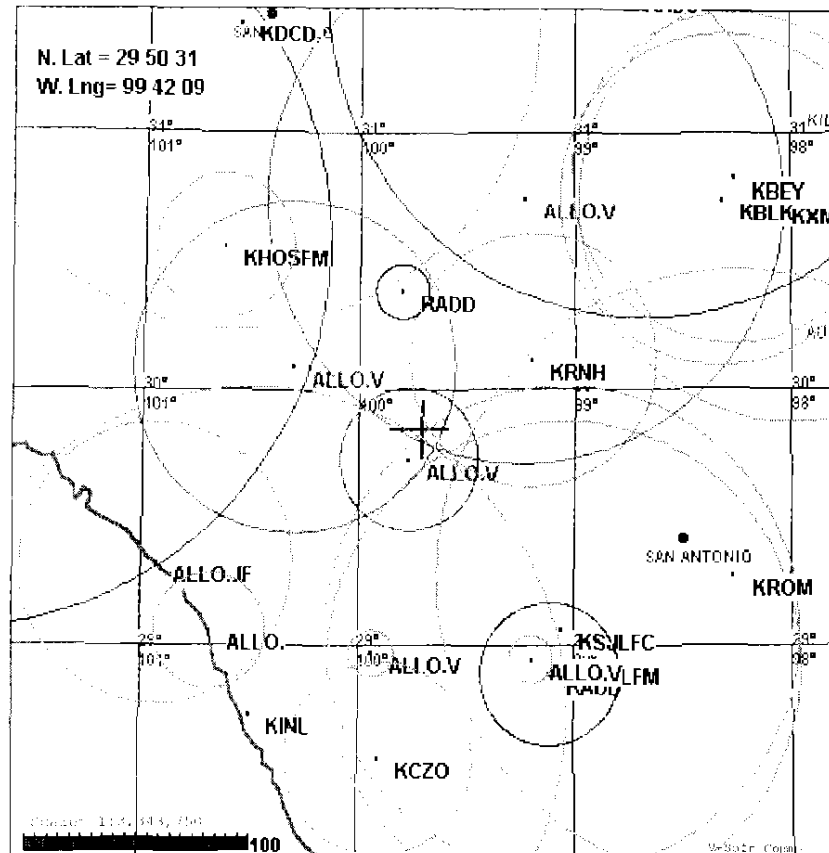
- US Highway
- Major Connector
- State Route
- Point of Interest
- Small Town
- Park/Reservation
- Locale
- City

- Water
- River/Canal
- Intermittent River

Attachment B

(Channel study for Channel 224A at Leakey, Texas)

FM PROSPTM LOCATE STUDY CH 224 A 92.7 MHz
Study



Call	CH#	Type	Location		D-KM	Azi	FCC	Margin
ALLO.V	226A	VAC	Leakey	TX	13.90	204.9	31.0	-17.10
ALLO.V	223A	VAC	Rocksprings	TX	63.86	295.6	72.0	-8.14
RDEL	224A	DEL	Mason	TX	110.32	23.9	115.0	-4.68
ALLO.V	224A	VAC	Mason	TX	110.32	23.9	115.0	-4.68
KSJLFC	223C2	CP N	Devine	TX	107.04	144.0	106.0	1.04
KRNH	222C2	LIC-Z	Kerrville	TX	57.78	57.8	55.0	2.78
KINL	224C3	LIC	Eagle Pass	TX	144.97	212.0	142.0	2.97
KSJLFC	223C2	LIC	Devine	TX	119.80	147.9	106.0	13.80
KROM	225C1	LIC N	San Antonio	TX	152.89	114.0	133.0	19.89
RADD	277C3	ADD	Junction	TX	60.47	351.2	12.0	48.47
RADD	224C2	ADD	Sheffield	TX	223.08	291.4	166.0	57.08
KDCD	225C1	LIC	San Angelo	TX	195.22	335.2	133.0	62.22
XHCDUF	225A	OPE	Ciudad Acuna	CI	132.03	244.5	61.0	71.03
ALLO.	225A		Ciudad Acuna	CI	132.03	244.5	61.0	71.03
RADD	224C3	ADD	Mullin	TX	214.50	27.2	142.0	72.50
KHOSFM	221A	LIC	Sonora	TX	119.69	312.0	31.0	88.69
ALLO.V	278A	VAC	La Pryor	TX	99.33	193.1	10.0	89.33
RADD	227A	ADD	Pearsall	TX	120.42	151.5	31.0	89.42
KBEY.C	223A	CP	Burnet	TX	166.38	52.7	72.0	94.38
KBLK.A	223A	APP	Burnet	TX	166.38	52.7	72.0	94.38
KXMG	227C	LIC	Cedar Park	TX	191.73	58.7	95.0	96.73
ALLO.V	277A	VAC	Vacpearsall	TX	110.98	153.7	10.0	100.98
ALLO.V	277A	VAC	Pearsall	TX	110.98	153.7	10.0	100.98
KCZO	221C3	LIC	Carrizo Springs	TX	143.70	187.6	42.0	101.70
ALLO.	222A		Jiminez	CI	128.50	227.7	25.0	103.50
ALLO.	227A		Jiminez	CI	128.50	227.7	25.0	103.50
KBEY	223A	LIC	Burnet	TX	176.46	51.2	72.0	104.46

Leakey, TX CH 224A 3.16 mv

Kerr W M A

North Fork Guadalupe River

East Prong Anceles River

Point Creek

South Fork Guadalupe River

West Frio River

South Fork Guadalupe River

North Prong Medina River

West Frio River

Real

N29 50 31.0
W99 42 9.0

Dry Frio River

West Frio River

Leakey

Frio River

Rio Frio

Vanderpool

Sabinal River

Sabinal River

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






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Scale 1:250,000 (at center)

5 Miles

5 KM

-  US Highway
-  Major Connector
-  State Route
-  County Seat
-  Small Town
-  Park/Reservation
-  Water
-  River/Canal

Intermittent River

Attachment C

(Report & Order for MM Docket No. 01-159)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-159
Table of Allotments,)	RM-10164
FM Broadcast Stations,)	RM-10395
(Comanche, Mullin and Mason, Texas))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 19, 2003

Released: March 21, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division considers herein the *Notice of Proposed Rule Making ("Notice")*,¹ issued in response to a petition filed by Charles Crawford ("Petitioner"), proposing the allotment of Channel **224A** to Comanche, Texas, as that community's second local FM transmission service (RM-10164). Petitioner filed supporting comments. A counterproposal was filed on behalf of Mullin Broadcasters ("MB"), proposing the allotment of Channel **224C3** at Mullin, Texas, as that community's first local aural transmission service.² MB also requests the substitution of Channel 259A for vacant Channel **224A** at Mason, Texas, to accommodate its proposal. Responsive comments were filed individually by the Petitioner, MB and M&M Broadcasters, Ltd. ("M&M").

2. MB states that Mullin, Texas, is a community for allotment purposes. In support of its proposal, MB reports that Mullin is an incorporated community, and is attributed with a population of 175 persons in the 2000 U.S. Census. Further, MB provided demographic information regarding Mullin to demonstrate that it has its own zip code (76864), maintains its own schools, fire services, churches, health care facilities and numerous business entities, several of which identify themselves with the community in their trade name, such as the Mullin Cafe and Mullin Service Center. MB asserts that in accordance with the Commission's allotment priorities,³ Mullin is entitled to a first local service preference (priority three), since Comanche currently has local aural service?

The communities of Mullin and Mason, Texas, have been added to the caption.

¹ *Comanche, Texas*, 16 FCC Red. 14075 (MB 2001).

² MB's counterproposal was placed on Public Notice March 15, 2002 (Report No. 2539).

³ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (co-equal weight is given to priorities (2) and (3)). See *Revisions of FM Assignment Policies and Procedures*, 90 FCC 2d 38 (1982).

⁴ Comanche is served locally by Station KYOX-FM and KCON-AM.

3. MB also advises that the requested allotment of Channel 224C3 at Mullin requires the substitution of Channel 259A for vacant Channel 224A at Mason, Texas.⁶ MB reports that Channel 259A can be allotted to Mason, Texas, at the reference coordinates for the Channel 224A allotment, consistent with the technical requirements of the Commission's Rules.⁷

4. In response to MB's counterproposal, Petitioner suggests that Channel 263A could be allotted in Mullin instead of Channel 224C3, to remove the conflict with proposed Channel 224A at Comanche, Texas. Petitioner also remarks that MB's request to substitute Channel 259A for Channel 224A at Mason is unavailable because it conflicts with proposed Channel 258C1 at Eldorado, Texas.

5. MB disputes Petitioner's arguments. Initially, MB states that there is no conflict between the Mason and Eldorado allotments.⁸ MB also argues that Petitioner's suggested substitution of Channel 263A for requested Channel 224C3 at Mullin, Texas, to remove a conflict with his proposal for Channel 224A at Comanche, is not equivalent. MB concludes that since the Comanche and Mullin, Texas, proposals remain in conflict, they must be compared according to the Commission's allotment priorities.

6. M&M's reply comments support the requested allotment of Channel 224C3 at Mullin, and commit to apply for the channel if allotted. M&M endorses Mullin's eligibility as a *bona fide* community that would benefit by the allotment of a first local broadcast service to serve the needs and interests of its residents.

7. A staff review of the proposals under consideration herein, reveals the unavailability of any other Class A channel for use at Comanche, or an alternate Class C3 channel for allotment at Mullin, Texas. Conflicting proposals are generally considered under the guidelines set forth in our allotment priorities, *supra*. Neither the Petitioner nor MB, respectively, demonstrated that the requested allotment of Channel 224A at Comanche, or Channel 224C3 at Mullin, Texas, would provide any first or second fulltime aural reception service, thus eliminating allotment priorities (1) and (2). Therefore, since MB's proposal for Channel 224C3 at Mullin would provide a first local aural service at that community (priority 3), whereas Comanche currently receives local aural service (priority 4), the Mullin proposal prevails.⁹ Additionally, contrary to Petitioner's assertion, we find that Channel 259A is available for

⁶ The distance between Mullin and Mason is 105 kilometers (65 miles) whereas a minimum distance of 142 kilometers (88 miles) is required between Class A and Class C3 co-channel allotments.

⁷ Channel 224A at Mason was listed among other vacant nonreserved band FM allotments, in Broadcast Auction No. 37, previously scheduled to commence on December 5, 2001. However, on July 3, 2001, the United States Court of Appeals for the District of Columbia Circuit in *National Public Radio, Inc., et al v. FCC, Nos. 00-1246 and 00-1255* (decided July 3, 2001) ("*NPR*") vacated the portion of the Commission's Noncommercial *Report and Order*, 65 FR 3637.5 (June 8, 2000), that required noncommercial educational ("*NCE*") entities that applied for authorizations in the non-reserved spectrum to participate in auctions with mutually exclusive commercial applicants. As the vacant nonreserved FM band allotments included in Auction No. 37 are potentially impacted by the Court's ruling, the Commission postponed Auction No. 37, pending its response to the *NPR* decision. See Public Notice, DA 01-2148, released September 14, 2001, 66 FR 48467 (September 20, 2001).

⁸ The distance separation between proposed Channel 258C1 at Eldorado and requested Channel 259A at Mason, Texas, is 133.3 kilometers (83 miles), and therefore meets the required minimum distance separation between first adjacent Class A and Class C1 channels.

allotment at Mason, Texas, as a replacement for vacant Channel 224A, and is not in conflict with proposed Channel 258C1 at Eldorado, Texas.¹⁰

8. In view of the interests expressed in providing Mullin, Texas, with a first local aural service, we will allot Channel 224C3 to that community, as requested. Channel 224C3 can be allotted to Mullin consistent with the minimum distance separation requirements specified in Section 73.207(b) of the Commission's Rules without a site restriction.¹¹ Additionally, we will allot Channel 259A as a replacement for vacant Channel 224A at Mason, Texas, at the current reference site for the vacant allotment.¹²

9. As Mason, Texas, is located within 320 kilometers (199 miles) of the U.S.-Mexico border, we will advise the Mexican government of the change to the FM Table of Allotments at that community.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(h) of the Commission's Rules, **IT IS ORDERED**, That effective **May 5, 2003**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, **IS AMENDED** for the community listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Mason, Texas	239C2, 259A, 269C3, 273C2, 281C2, 289C2
Mullin, Texas	224C3

11. A filing window for Channel 259A at Mason, Texas, and for Channel 224C3 at Mullin, Texas, will not be opened at this time. Instead, the issue of opening a filing window for those channels will be addressed by the Commission in a subsequent order.

12. **IT IS FURTHER ORDERED**, That the petition for rule making filed by Charles Crawford (RM-10164), requesting the allotment of Channel 224A to Comanche, Texas, **IS DENIED**.

13. **IT IS FURTHER ORDERED**, That this proceeding **IS TERMINATED**.

¹⁰ Additionally, in accordance with Commission policy, we will allot the highest class channel requested to a community that meets the technical provisions of our Rules. In that manner we can assure the most effective and efficient management of the frequency spectrum while providing the public with the greatest coverage area broadcast facility to the requested community. It has been demonstrated that Channel 224C3 is available to Mullin, and therefore, we would not consider a Class A allotment at that community in this proceeding.

¹¹ See footnote 8, *supra*.

¹² Reference coordinates for Channel 224C3 at Mullin, Texas, are 31-33-24 NL and 98-39-55 WL.

¹³ Reference coordinates for Channel 259A at Mason, Texas, are 30-45-00 NL and 99-14-00 WL.

14. For further information concerning the above, contact Nancy Joyner, Media Bureau. (202) 418-2180.

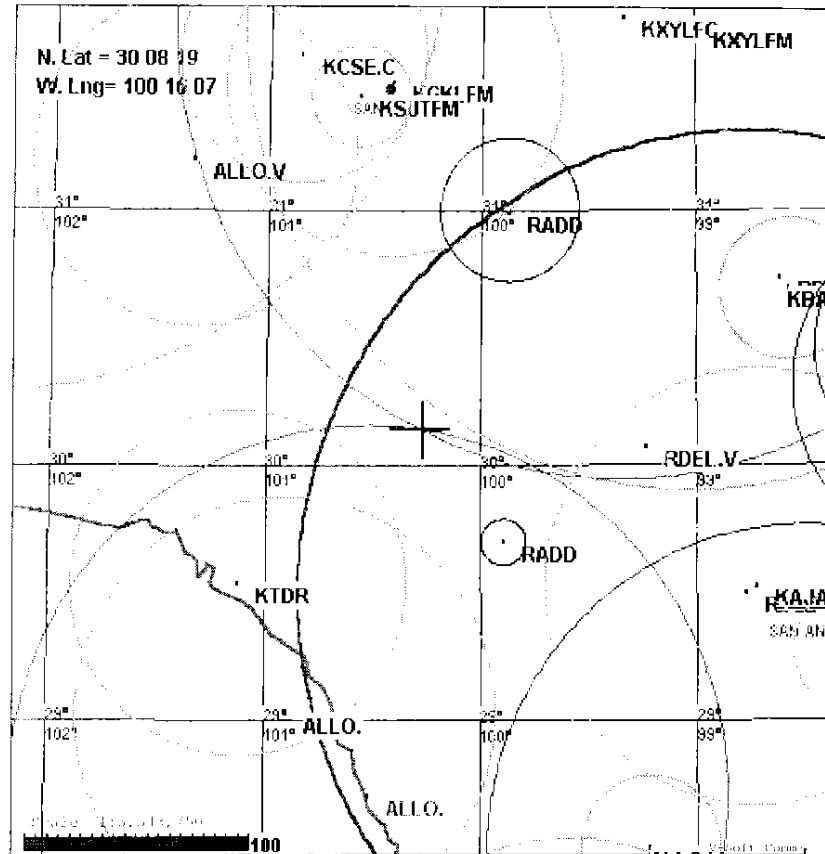
FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment D

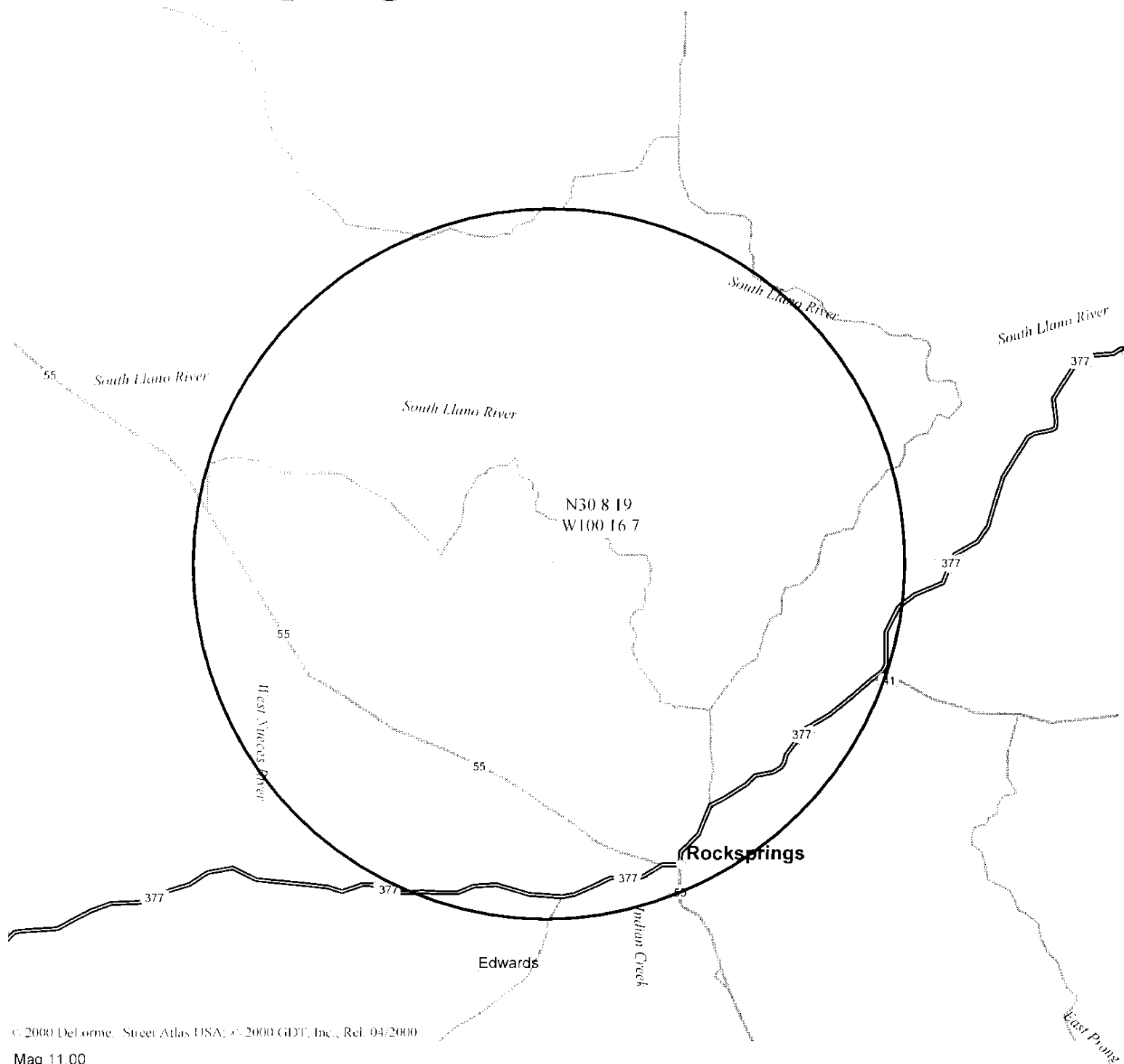
(Channel study for Channel 245A at Rocksprings)

FM PROSPTM LOCATE STUDY CH 245 A 96.9 MHz
Study



Call	CH#	Type	Location		D-KM	Azi	FCC	Margin
RADD	245C1	ADD	San Antonio	TX	160.52	115.9	200.0	-39.48
ALLO.	244C		Piedras Negras	CI	160.58	188.7	161.0	-0.42
KXLYFC	245C1	CP	N Brownwood	TX	199.63	26.3	200.0	-0.37
KXLYFM	245C1	LIC	Brownwood	TX	211.68	34.4	200.0	11.68
KTDR	242C1	LIC	Del Rio	TX	105.87	231.3	75.0	30.87
ALLO.	248C		San Carlos	CI	137.39	206.5	94.0	43.39
RADD	299A	ADD	Leakey	TX	60.61	143.5	10.0	50.61
RDEL	247C	DEL	San Antonio	TX	160.52	115.9	95.0	65.52
ALLO.V	243A	VAC	Ingram	TX	99.87	93.8	31.0	68.87
RDEL	243A	DEL	Ingram	TX	99.87	93.8	31.0	68.87
KAJA	247C*	LIC	San Antonio	TX	164.15	114.3	95.0	69.15
RADD	242A	ADD	Menard	TX	102.55	21.8	31.0	71.55
KXKLFM	248C1	LIC	San Angelo	TX	151.14	354.8	75.0	76.14
ALLO.V	246A	VAC	Big Lake	TX	156.05	318.9	72.0	84.05
KMCM	245C1	LIC	Odessa	TX	289.34	319.0	200.0	89.34
RDEL	244C1	DEL	Georgetown	TX	232.05	80.7	133.0	99.05
KHFIFM	244C1	LIC	Georgetown	TX	238.43	84.5	133.0	105.43
RDEL	244C1	DEL	Georgetown	TX	238.43	84.5	133.0	105.43
RADD	245C3	ADD	Tilden	TX	250.31	136.7	142.0	108.31
KCSE	243C2	LIC	Sterling City	TX	171.02	341.4	55.0	116.02
KCSE.C	243C2	CP	Sterling City	TX	171.02	341.4	55.0	116.02
KSJTFM	298C1	LIC	San Angelo	TX	147.01	348.8	22.0	125.01
RDEL	242A	DEL	Llano	TX	172.03	67.2	31.0	141.03
KBAE	242A	LIC-Z	Llano	TX	174.05	69.0	31.0	143.05
RDEL	248C	DEL	Waco	TX	240.37	84.9	95.0	145.37
RADD	247C1	ADD	Lakeway	TX	240.37	84.9	75.0	165.37
ALLO.V	242A	VAC	Cotulla	TX	207.99	150.3	31.0	176.99
RADD	243C2	ADD	Lago Vista	TX	232.05	80.7	55.0	177.05

Rocksprings, TX CH 245A 3.16 mv



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





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Mon May 19 14:36 2003

Scale 1:250,000 (at center)

5 Miles

5 KM

-  US Highway
-  Major Connector
-  State Route
-  County Seat
-  Water
-  River/Canal
-  Intermittent River

Attachment E

(Report & Order for MM Docket No. 00-148)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 00-148
FM Broadcast Stations.)	RM-9939
(Quanah, Archer City, Converse, Flatonia,)	RM-10198
Georgetown, Ingram, Keller, Knox City,)	
Lakeway, Lago Vista, Llano, McQueeney,)	
Nolanville, San Antonio, Seymour, Waco and)	
Wellington, Texas, and Ardmore, Durant,)	
Elk City, Healdton, Lawton and Purcell,)	
Oklahoma.)		

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 7, 2003

Released: May 8, 2003

By the Chief, Audio Division:

1. The Audio Division has before it a *Notice of Proposed Rule Making* in the captioned proceeding.¹ Nation Wide Radio Stations filed Comments and Reply Comments. First Broadcasting Company, L.P., Rawhide Radio, L.L.C., Next Media Licensing, Inc., Capstar TX Limited Partnership and Clear Channel Broadcast Licenses, Inc. ("Joint Parties") filed a Counterproposal and Reply Comments. Fritz Broadcasting Co., Inc. and M&M Broadcasters, Ltd. filed Joint Reply Comments. Elgin FM Limited Partnership and Charles Crawford ("Elgin-Crawford") jointly filed Reply Comments and Maurice Salsa filed Reply Comments.² For the reasons discussed below, we are dismissing both the initial proposal for Channel 233C3 at Quanah, Texas, and the Counterproposal.

Background

2. At the request of Nation Wide Radio Stations, the *Notice* in this proceeding proposed the allotment of Channel 233C3 to Quanah, Texas.³ In response to the *Notice*, the Joint Parties filed a Counterproposal involving twenty-two communities in Texas and Oklahoma. In one aspect of this Counterproposal, the Joint Parties propose the substitution of Channel 248C for Channel 248C2 at Durant, Oklahoma, reallocation of Channel 248C to Keller, Texas, and modification of the Station KLLAK license to specify operation on Channel 248C at Keller, Texas. In order to accommodate this allotment,

¹ 15 FCC Rcd 15809 (MM Bur. 2000).

² In this proceeding, Texas Grace Communications, Elgin FM Limited Partnership, Charles Crawford, Maurice Salsa, M&M Broadcasters, AM&FM Broadcasters and the Joint Parties have filed additional pleadings. In view of our action dismissing the Joint Parties Counterproposal, it will not be necessary to discuss these pleadings in the context of this *Report and Order* terminating this proceeding.

³ Nation Wide Radio Stations has withdrawn its expression of interest in this allotment. In accordance with Section 1.420(j) of the Rules, Nationwide Radio Stations states that neither it nor any of its principals have been paid or promised any consideration for the withdrawal of its expression of interest in the Quanah allotment.

the Joint Parties propose three channel substitutions. Included among those substitutions was the substitution of Channel 230C1 for Channel 248C1 at Archer City, Texas, and the modification of the Station KRZB permit to specify operation on Channel 230C1. On the basis of our own engineering review, Joint Reply Comments filed by Fritz Broadcasting Co., Inc. and M&M Broadcasters, Ltd., and Reply Comments filed by Maurice Salsa, the proposed transmitter site (33-36-58 and 98-51-42) for the Channel 230C1 allotment at Archer City is short-spaced to a prior-filed application filed by AM & FM Broadcasters, LLC, licensee of Station KICM, Channel 229C2, Krum, Texas, to upgrade to Channel 229C1 (File No. BMPH-20000725AAZ) (the "KICM Class C1 Application").

3. Counterproposals that are in conflict with a previously filed application can be considered if the counterproposal is amended to remove the conflict within 15 days from the date the counterproposal appears on public notice.⁴ The Note also requires a counterproponent to show that it could not have known by exercising due diligence of the pending conflicting FM application. The Joint Parties and AM & FM Broadcasters submitted Reply Comments addressing this issue. Under the agreement, AM & FM Broadcasters agrees to file an application to downgrade Station KICM to Channel 229C2 in the event its application is granted and the Counterproposal is adopted. Pursuant to the agreement, the Joint Parties would "compensate" AM & FM Broadcasters for the downgrade of Station KICM. On August 20, 2001, the staff granted the KICM Class C1 Application.

Discussion

4. We dismiss the Counterproposal because the proposed Archer City Channel 230C1 allotment is short-spaced to the KICM Class C1 construction permit. The Joint Parties have not shown that they could not have known about the then-conflicting KICM Application. Nor have the Joint Parties sought to amend their Counterproposal to protect the proposed Archer City Channel 230C1 allotment.

5. The Commission does not entertain a short-spaced allotment that is contingent on the grant of another application.⁵ This is precisely what the Joint Parties seek. The Archer City allotment is short-spaced to the KICM construction permit and contingent on the staff granting future applications by AM & FM Broadcasters for both a Class C2 construction permit and license. We reject Joint Parties argument that its downgrade proposal complies with the contingent application procedures set forth in Section 73.3517(e) of the Commission's Rules. Section 73.3517(e) permits the simultaneous acceptance of contingent *minor change applications*. It does not authorize the filing of contingent rulemaking petitions. Accordingly, the Counterproposal must be dismissed.

Alternative Proposals

6. The Joint Parties filed an alternative twelve-allotment proposal in anticipation of a staff determination that the Channel 230C1 Archer City allotment is impermissibly short-spaced to the KICM permit. We reject this alternative. A counterproposal must conflict with the proposal set forth in the Notice.⁶ In this instance, none of these proposals conflict with Nation Wide Radio Station's initial proposal for a Channel 233C3 allotment at Quanah. As such, we will not bifurcate the Counterproposal or otherwise consider any of these proposals in the context of this proceeding.⁷

⁴ See Note to Section 73.208 of the Rules; see also *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 8 FCC Rcd 4743 (1993).

⁵ See *Oxford and New Albany, Mississippi*, 3 FCC Rcd 615 (MM Bur. 1988), *recon.* 3 FCC Rcd 6626 (MM Bur. 1988); see also *Cut and Shoot, Texas*, 11 FCC Rcd 16383 (MM Bur. 1996).

⁶ See *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 931, n. 5 (1990).

⁷ See also *Broken Arrow and Bixby, Oklahoma, Coffeyville, Kansas*, 3 FCC Rcd 6507 (MM Bur. 1988).

7. In the event that its Counterproposal can not be favorably entertained, the Joint Parties advance two alternative proposals. The staff no longer entertains alternative proposals set forth in counterproposals.⁸ In any event, each of these alternatives fails to comply with our rules and procedures. The first proposal involves the proposal to reallocate Channel 248C to Keller, Texas, and modify the Station KLLK license to specify operation on Channel 248C at Keller. A Channel 248C allotment at Keller requires the substitution of Channel 230C1 at Archer City, and thus, cannot be considered. The second alternative only proposes the substitution of Channel 247C1 for Channel 248C at Waco, Texas, reallocation of Channel 247C1 to Lakeway, Texas, and modification of the Station KWTX license to specify operation on Channel 247C1 at Lakeway. The Joint Parties also proposed related channel substitutions necessary to accommodate this reallocation. However, none of these proposed channel substitutions conflict with the underlying Channel 233C3 allotment at Quanah, Texas, proposed in the *Notice*.

8. Accordingly, IT IS ORDERED, That the aforementioned proposal filed by Nation Wide Radio Stations for a Channel 233C3 allotment at Quanah, Texas, IS DISMISSED.

9. IT IS FURTHER ORDERED, That the aforementioned Counterproposal filed by the Joint Parties IS DISMISSED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁸ See *Winslow, Camp Verde, Mayer and Sun City West, Arizona*, 16 FCC Rcd 9551 (MM Bur. 2001).